

## **Remarks**

### Telephonic Interview

Applicants wish to thank Examiner Garvey for taking the time to discuss the claims, as amended in this paper, in a telephonic interview January 26, 2007. Applicants and Examiner Garvey agreed that the amended claims would overcome the rejections of record and that the amendments would likely be entered. In the event that the amendments would not be entered, Examiner Garvey agreed that she would contact Applicants so that a speedy Request for Continued Examination could be filed.

### Amendments to the Claims

Claims 81, 85, 89, 92, and 93, previously dependent on claim 80, have been rewritten to incorporate the recitations of now-canceled claim 80. Claim 80 supports these amendments.

Claim 96 has been amended to recite dependency from any one of claims “82, 85, 89, or 93” in place of now-canceled claim 80. Claim 96 supports this amendment. The specification at page 50, lines 15-18 also supports this amendment.

New claim 97 recites that the modified HA protein of claim 82 comprises an insertion or a deletion mutation. New claim 98 recites that the mutation is a deletion and that the deletion attenuates the virus particles. The specification supports claims 97 and 98 at page 36, lines 29-30 and at page 50, lines 22-25.

These amendments either cancel claims rejected in the final Office Action or add claims that recite dependency from claims indicated as containing allowable subject matter in the final Office Action. Thus, the amendments will not require further search or consideration. The nature of these amendments also places the application in condition for allowance. Furthermore, Applicants have not added claims beyond those that were otherwise

pending in the application (Applicants added five claims in the amendment, but also canceled five claims). Applicants respectfully request entry of these amendments.

Applicants make these amendments without prejudice. These amendments are not to be construed as abandonment of the previously claimed subject matter or an agreement with any objection or rejection of record.

Request for Correction of Inventorship

Applicants and Assignee respectfully request that the Patent Office amend the inventorship of the above-identified application from Peter Palese and Adolfo Garcia-Sastre to Peter Palese, Mark Krystal, and Jeffrey Parvin. A request for correction of inventorship under 37 C.F.R. § 1.48 and all necessary supporting documents accompany this paper.

The Rejection of Claim 80 Under 35 U.S.C. § 102(a)

The final Office Action rejects claim 80 under 35 U.S.C. § 102(a) as anticipated by Luytjes *et al.* (*Cell* 59 (1989):1107-1113). Applicants have canceled claim 80. The rejection is moot.

Applicants respectfully request withdrawal of this rejection.

The Rejection of Claims 80, 83, and 84 Under 35 U.S.C. § 102(a)

The final Office Action rejects claims 80, 83, and 84 under 35 U.S.C. § 102(a) as anticipated by Enami *et al.* (*PNAS* 87 (1990):3802-3805). Applicants have canceled claims 80, 83, and 84. The rejection is moot.

Applicants respectfully request withdrawal of this rejection.

The Rejection of Claim 80 – Nonstatutory Obviousness-Type Double Patenting

Claim 80 has been rejected on the ground of nonstatutory obviousness-type double patenting as unpatentable over claim 47 of U.S. Patent No. 6,649,372. Claim 80 has been canceled. The rejection is moot.

Applicants respectfully request withdrawal of this rejection.

The Rejection of Claims 80, 90, 91, and 96 – Nonstatutory Obviousness-Type Double Patenting

Claims 80, 90, 91, and 96 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-6, 23-28, and 45-48 of copending application serial number 10/713,732. Claims 80, 90, and 91 have been canceled. The rejection of these claims is moot. Applicants have amended claim 96 to depend from claims “82, 85, 89, or 93” (not subject to the instant rejection) in place of claim “80.” The amendment obviates the rejection.

Applicants respectfully request withdrawal of this rejection.

Respectfully submitted,

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